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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ESTATE OF SANDRA ELLIS, et al.,
Plaintiffs,
v.
MERCK & COMPANY, INC., et al.,
Defendants.

Case Number C 07-0074 JF (HRL)
ORDER¹ GRANTING MOTION TO
STAY
[re: docket nos. 5, 9]

This case is one of many around the country pertaining to the alleged side-effects of the drug Vioxx. Defendant Merck & Company, Inc. (“Merck”) moves to stay proceedings pending a decision on transfer by the judicial panel on multidistrict litigation (“the MDL Panel”). Plaintiffs oppose the motion to stay and moves to remand the case to state court on the basis that this Court lacks subject matter jurisdiction. Merck opposes the motion to remand on the basis that diversity was destroyed by fraudulent joinder of non-diverse defendants. The Court heard oral argument on both motions on April 20, 2007.

Merck provided notice to the MDL Panel of this “tag-along” action on January 12, 2007. The MDL Panel issued a conditional transfer order on February 1, 2007. According to Merck, at

¹ This disposition is not designated for publication and may not be cited.

1 present there are more than forty-five California cases that involve the same allegedly fraudulent
2 joinder. Other courts in this district have stayed actions on similar or identical facts pending a
3 determination by the MDL Panel. *See e.g.* Memorandum & Order Re. Motion to Remand,
4 *Johnson v. Merck & Co., Inc.*, Case No. C 05-2881 (N.D.Cal. Mar. 2, 2007).

5 While the motion to remand the case advances strong arguments, these arguments may
6 be heard by the MDL Panel and by the transferee court in the event transfer is ordered. In light of
7 this consideration, in view of the rulings of other courts on this issue, and in the interest of
8 judicial economy and consistency, the Court will stay this action pending a decision on transfer
9 by the MDL Panel.

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11 IT IS SO ORDERED.

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13 DATED: April 27, 2007.

14
15 
16 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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